

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION**

APPLETON PAPERS INC. and	)	
NCR CORPORATION,	)	
	)	
Plaintiffs,	)	
v.	)	No. 08-CV-16-WCG
	)	
GEORGE A. WHITING PAPER COMPANY,	)	
ET AL.,	)	
Defendants.	)	

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NCR CORPORATION,	)	
	)	
Plaintiff,	)	
v.	)	No. 08-CV-0895-WCG
	)	
KIMBERLY-CLARK CORPORATION,	)	
ET AL.,	)	
Defendants.	)	

**PLAINTIFFS' [PROPOSED] FINDINGS OF FACT**

Pursuant to Civil L.R. 56(b)(1)(C) of the United States District Court for the Eastern District of Wisconsin, Plaintiffs NCR Corporation and Appleton Papers Inc. respectfully submit the following [proposed] findings of fact, all of which are undisputed, in support of their Motion for Summary Judgment on Certain Defendants' State Common Law Counterclaims.

**I. CONTRIBUTION, COST RECOVERY, AND/OR INDEMNITY COUNTERCLAIMS.**

1. Defendant P.H. Glatfelter has asserted state and/or common law claims to recover costs and damages allegedly incurred with the cleanup of the Lower Fox River Site. Roach Decl., Ex. 1 [P.H. Glatfelter Company's Answer, Affirmative Defenses, and Counterclaim to Plaintiffs' Seventh Amended Complaint, Dkt. 297 (Oct. 15, 2008)].

2. Defendant U.S. Paper has asserted state and/or common law claims to recover costs and damages allegedly incurred with the cleanup of the Lower Fox River Site. Roach Decl., Ex. 2 [Defendant U.S. Paper Mills Corp.'s Answer to Fifth Amended Complaint, Affirmative Defenses and Counterclaim, Dkt. 240 (Sept. 4, 2008)].

3. Defendant Neenah-Menasha Sewerage Commission has asserted state and/or common law claims to recover costs and damages allegedly incurred with the cleanup of the Lower Fox River Site. Roach Decl., Ex. 3 [Defendant Neenah-Menasha Sewerage Commission's Answer and Affirmative Defenses to Sixth Amended Complaint and Counterclaims, Dkt. 261 (Sept. 29, 2008)].

4. Defendant City of Appleton has asserted state and/or common law claims to recover costs and damages allegedly incurred with the cleanup of the Lower Fox River Site. Roach Decl., Ex. 4 [Defendant City of Appleton's Answer to Fifth Amended Complaint and Counterclaim, Dkt. 172 (July 2, 2008)].

## **II. NEGLIGENCE AND STRICT LIABILITY COUNTERCLAIMS.**

5. Defendant CBC Coating has alleged that any liability CBC has under CERCLA at the Lower Fox River Site is attributable to the allegedly negligent actions of Plaintiffs. Roach Decl., Ex. 5 [Defendant, CBC Coating, Inc.'s Answer, Affirmative Defenses and Counterclaim to Seventh Amended Complaint, Dkt. 302 (Oct. 16, 2008)].

6. CBC has not alleged any other damages resulting from the allegedly negligent actions of Plaintiffs other than its liability under CERCLA at the Lower Fox River Site. Roach Decl., Ex. 5 [Defendant, CBC Coating, Inc.'s Answer, Affirmative Defenses and Counterclaim to Seventh Amended Complaint, Dkt. 302 (Oct. 16, 2008)].

7. Defendant WTM I Company has alleged that it incurred costs and damages in connection with the Lower Fox River Site as a result of the allegedly negligent actions of Plaintiffs. Roach Decl., Ex. 6 [Answer and Counterclaims of WTM I Company to the Seventh Amended Complaint, Dkt. 300 (Oct. 16, 2008)].

8. WTM has not alleged or specifically identified any other damages resulting from the allegedly negligent actions of Plaintiffs, other than costs and damages incurred in connection with the Lower Fox River Site. Roach Decl., Ex. 6 [Answer and Counterclaims of WTM I Company to the Seventh Amended Complaint, Dkt. 300 (Oct. 16, 2008)].

9. CBC has alleged that any liability CBC has under CERCLA at the Lower Fox River Site is attributable to the allegedly unreasonably dangerous condition of the broke sold by Plaintiffs, and/or Plaintiffs' sale of an unreasonably dangerous product. Roach Decl., Ex. 5 [Defendant, CBC Coating, Inc.'s Answer, Affirmative Defenses and Counterclaim to Seventh Amended Complaint, Dkt. 302 (Oct. 16, 2008)].

10. CBC has not alleged any other damages resulting from the Plaintiffs' alleged actions other than its liability under CERCLA at the Lower Fox River Site. Roach Decl., Ex. 5 [Defendant, CBC Coating, Inc.'s Answer, Affirmative Defenses and Counterclaim to Seventh Amended Complaint, Dkt. 302 (Oct. 16, 2008)].

11. WTM has alleged that it has incurred costs and damages in connection with the Lower Fox River Site as a result of Plaintiffs' alleged failure to warn and/or misrepresentations concerning an unreasonably dangerous product. Roach Decl., Ex. 6 [Answer and Counterclaims of WTM I Company to the Seventh Amended Complaint, Dkt. 300 (Oct. 16, 2008)].

12. WTM has not alleged or identified any other damages resulting from Plaintiffs' alleged failure to warn and/or misrepresentations, other than costs and damages incurred in connection with the Lower Fox River Site. Roach Decl., Ex. 6 [Answer and Counterclaims of WTM I Company to the Seventh Amended Complaint, Dkt. 300 (Oct. 16, 2008)].

### **III. PUBLIC NUISANCE COUNTERCLAIMS.**

13. The Georgia-Pacific Defendants have alleged that Plaintiffs are liable for creation of a public nuisance. Roach Decl., Ex. 7 [Georgia-Pacific Defendants' Answer, Affirmative Defenses, and Counterclaims to Plaintiffs' Seventh Amended Complaint, Dkt. 310 (Oct. 17, 2008)].

14. The Georgia-Pacific Defendants have alleged that Plaintiffs are liable for maintenance of a public nuisance. Roach Decl., Ex. 7 [Georgia-Pacific Defendants' Answer, Affirmative Defenses, and Counterclaims to Plaintiffs' Seventh Amended Complaint, Dkt. 310 (Oct. 17, 2008)].

15. The Georgia-Pacific Defendants have not pleaded a peculiar injury relating to their creation of a public nuisance counterclaim. Roach Decl., Ex. 7 [Georgia-Pacific Defendants' Answer, Affirmative Defenses, and Counterclaims to Plaintiffs' Seventh Amended Complaint, Dkt. 310 (Oct. 17, 2008)].

16. The Georgia-Pacific Defendants have not pleaded a peculiar injury relating to their maintenance of a public nuisance counterclaim. Roach Decl., Ex. 7 [Georgia-Pacific Defendants' Answer, Affirmative Defenses, and Counterclaims to Plaintiffs' Seventh Amended Complaint, Dkt. 310 (Oct. 17, 2008)].

17. Menasha has alleged that Plaintiffs are liable for creation of a public nuisance. Roach Decl., Ex. 8 [Defendant Menasha Corporation's Answer to Seventh Amended Complaint and Counterclaims, Dkt. 293 (Oct. 13, 2008)].

18. Menasha has alleged that Plaintiffs are liable for maintenance of a public nuisance. Roach Decl., Ex. 8 [Defendant Menasha Corporation's Answer to Seventh Amended Complaint and Counterclaims, Dkt. 293 (Oct. 13, 2008)].

19. Menasha has not pleaded a peculiar injury relating to its creation of a public nuisance counterclaim. Roach Decl., Ex. 8 [Defendant Menasha Corporation's Answer to Seventh Amended Complaint and Counterclaims, Dkt. 293 (Oct. 13, 2008)].

20. Menasha has not pleaded a peculiar injury relating to its maintenance of a public nuisance counterclaim. Roach Decl., Ex. 8 [Defendant Menasha Corporation's Answer to Seventh Amended Complaint and Counterclaims, Dkt. 293 (Oct. 13, 2008)].

Respectfully submitted,

APPLETON PAPERS INC.

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NCR CORPORATION

/s/ Kathleen L. Roach

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Dated: April 3, 2010

## **CERTIFICATE OF SERVICE**

I hereby certify that on April 3, 2010, I electronically filed the foregoing Plaintiffs' [Proposed] Findings of Fact using the ECF system, which will send notification of such filing to:

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